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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/694,425	10/23/2000	Troy Alan Ussery	OFFW01-00008	1041
<div>7590 01/05/2007 William A. Munck, Esq NOVAKOV DAVIS & MUNCK, P.C. 900 Three Galleria Tower 13155 Noel Road Dallas, TX 75240</div>			<div>EXAMINER SHAH, AMEE A</div> <div>ART UNIT 3625 PAPER NUMBER</div>	
SHORTENED STATUTORY PERIOD OF RESPONSE		MAIL DATE	DELIVERY MODE	
3 MONTHS		01/05/2007	PAPER	

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

09/694,425

Applicant(s)

USSERY ET AL.

Examiner

Amea A. Shah

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 October 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 October 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____.

DETAILED ACTION

Claims 1-20 are pending in this application.

Response to Amendment

Applicant's amendment, filed October 16, 2006, has been entered. In view of the replacement drawings and amended specification, the objections to the drawings are withdrawn.

Response to Arguments

Applicant's arguments filed October 16, 2006, regarding claims 1-20 have been fully considered but they are not persuasive.

In response to Applicant's argument that the proper art Thompson does not provide, teach or suggest Applicant's electronic commerce system that has a data repository that is populated with company information by the company nodes, wherein each set of company information relates to a specific company that is represented by a specific company node (Remarks, page 19), the Examiner disagrees. As the Board of Appeals stated in its decision of _____, "Thompson's company nodes, represented by the architect or contractor, present a construction project over a computer network (column 2, lines 36-39) and that the data repository for information relating to that construction project or projects meets the claimed 'data repository' since Thompson's data storage device 25, database 30, and a series of web pages 35 obviously provide information regarding the construction projects presented by the 'company' (Decision, page 6). Under similar reasoning, each of Thompson's company nodes related to a specific company, i.e. architect or contractor.

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In response to Applicant's argument that the prior art Thompson does not provide, teach or suggest the Applicant's electronic commerce system wherein at least one company node is operable to modify the company information that is stored in the data files and is operable to control when selected portions of the company information in the data filed are made available to the constituency nodes (Remarks, page 19), the Examiner disagrees. This limitation was taught by Thompson in view of Kobayashi. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to Applicant's argument that the prior art Thompson does not provide, teach or suggest Applicant's electronic commerce system that has a communications controller that is operable to propagate communications interfaces accessible by said constituency nodes with selected portions of said company information under control of said company nodes and gather feedback information representative of constituency response to said constituency nodes accessing said communication interfaces because Thompson does not disclose company nodes as used by the Applicant (Remarks, pages 19-23), the Examiner disagrees and directs Applicant above to the response to Applicant's argument that Thompson does not disclose company nodes.

In response to Applicant's argument that "Examiner stated that the 'company information; that is stored in the data depository 125 of the Applicant's invention is to be little patentable weight because (according to the Examiner) the information is non-functional descriptive material (Remarks, pages 23-24), the Examiner states that Applicant misstates Examiner position as detailed in the previous office action and below. Examiner gave the

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company information stored the appropriate patentable weight. The prior art Thompson discloses a data repository (col. 2, lines 40-45) that is operable to store data files associated with said company nodes, wherein said company nodes populate respective associated data files with company information relating to construction projects presented by the company. The difference between Thompson's company information relating to construction projects and Applicant's limitation of company information relating to a specific company that is represented by a specific company node is only found in nonfunctional descriptive language that does not functionally relate to the substrate of the system. The functions of storing, modifying, controlling and propagating the data would be performed in the same manner regardless of the specific type of data, whether relating to a company or a project or both, and this will not distinguish the invention from the prior art in terms of patentability.

In response to applicant's argument that the examiner's conclusion of obviousness in combining the prior arts Thompson and Kobayashi is based upon improper hindsight reasoning (Remarks, pages 27-33), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to Applicant's argument that the combination of the Kobayashi system and the Thompson system would be unworkable (Remarks, page 28), the Examiner states that Applicant merely makes a general allegation without specifically pointing out the reasons why such a combination would be unworkable.

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In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning (Remarks, pages 28-33), it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Examiner Note

Examiner cites particular pages, columns, paragraphs and/or line numbers in the references as applied to the claims below for the convenience of the applicant. Although the specified citations are representative of the teachings in the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested that, in preparing responses, the applicant fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the examiner.

Claim Rejections - 35 U.S.C. § 103

The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

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having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. §103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1-5, 8-15, 18-20 are rejected under 35 U.S.C. §103(a) as being unpatentable over Thompson, US 6,393,410 (hereafter referred to as "Thompson"), in view of Kobayashi et al., US 6,275,825 B1 (hereafter referred to as "Kobayashi").

Referring to claim 1. Thompson discloses an electronic commerce system for use over a global communications network (i.e., the internet) having company nodes (i.e., the owner of a project such as an architect or contractor) and constituency nodes (i.e., a purchaser such as a contractor or engineer) associated therewith (*see* Abstract); wherein said system comprises:

- a date repository (col. 2, lines 40-45) that is operable to store data files associated with said company nodes, wherein said company nodes populate respective associated data files with company information (i.e., information about the construction projects);
- wherein at least one company node is operable to modify said company information that is stored in said data files (col. 3, lines 46-55 – note the administrative team/user is able to change and update the information); and

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- a communications controller (20) that is operable (i) to propagate communications interfaces accessible by said constituency nodes with selected portions of said commercial information (i.e., the construction project) under control of said company nodes (col. 3, lines 29-36), and (ii) gather feedback information (i.e., the response of the sub-contractors) representative of constituency response to said constituency nodes accessing said communication interfaces (col. 4, lines 20-49).

Thompson does not expressly show wherein each set of said company information relates to a specific company that is represented by a specific company node, but rather that the data files contain company information relating to construction project presented by the company (col. 2, lines 36-39). However, this difference is only found in the nonfunctional descriptive material stored in the data files is not functionally related to the substrate of the system. The system would perform the functions of storing, modifying, controlling and propagating the data in the same manner regardless of the type of data, whether relating to a company, a project or both. Thus, this non-functional descriptive material will not distinguish the claimed invention from the prior art Thompson in terms of patentability. *See In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowrey*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the invention to utilize the system disclosed by Thompson to store, modify, control and disseminate any type of information in any industry.

Thompson further does not expressly show wherein at least one company node is operable to control when selected portions of company information in said data files are made available to said constituency nodes. However, Kobayashi, dealing with the same problem of

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access to files, discloses a method and system for controlling access to various features of a software application, including wherein the software controls when selected portions of information in data files are made available to constituency nodes, i.e. controlling access to portions of information contained in databases (*see, e.g.*, Abstract, col. 4, lines 8-31 and col. 10, line 44 through col. 11, line 16).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Thompson to include the teachings of Kobayashi to allow for the ability to control when selected portions of company information in said data files are made available to said constituency nodes. Doing so would allow for authorized users to have access to certain information based on security clearances and the like, while ensuring unauthorized users do not have access.

Referring to claims 2 and 3. Thompson in view of Kobayashi discloses the system of claim 1 that is further operable to process said gathered feedback information (i.e., submitted bids) and, in response thereto, modify one of said data files (Thompson, col. 4, lines 31-49) and to report results of the bidding process to the company node.

Referring to claim 4. Thompson in view of Kobayashi discloses the system of claim 1 wherein the controller, while gathering feedback information, employs mathematical representation (i.e., the fundamentals such as binary code upon which computing occurs) to represent at least one of constituency understanding and reaction (i.e., submitted bids) (Thompson, Abstract and col. 3, line 26 which discloses the use of a digitizer).

Referring to claims 5. Thompson in view of Kobayashi discloses the system of claim 1 further comprising a security controller that is operable, with respect to those data files associated with said company node, to limit access to said those data files to designated personnel of said company nodes; i.e., the information is not made public until a supervisor accepts the information (Thompson, col. 3, lines 29-36). Additionally, Thompson also teaches the use of a user authentication system where the use must enter a login ID and password.

Referring to claims 8 and 9. Thompson in view of Kobayashi discloses the system of claim 1 wherein the controller is also operable to store, index, and relate associated portions of said commercial information in the data repository and wherein said commercial information is organized in a manner to be made available to the public or constituency nodes (Thompson, *see* Abstract).

Referring to claims 11-15, 18 and 19. All of the limitations in method claims 11-15, 18 and 19 are closely parallel to the limitations of system claims 1-5, 8 and 9, analyzed above and are rejected on the same bases.

Claims 6, 7, 16, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Thompson in view of Kobayashi; as applied to claims 1 and 5, and further in view of Holzrichter et al., US 5,729,694 (hereafter referred to as "Holzrichter").

Referring to claims 6 and 7. Thompson in view of Kobayashi discloses the systems of claims 1 and 5 wherein the system includes a security controller, but does not disclose wherein

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the controller includes an interactive voice recognition to identify designated personnel and wherein the controller translates selected portions of the information from a first language into a second language. Holzrichter, addressing the same problem, teaches the use of speaker identification, language-of-speech identification, and speech translation (*see, e.g., Abstract*).

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have modified the system of Thompson in view of Kobayashi to include the teachings of Holzrichter to allow for the ability to use an interactive voice recognition to identify designated personnel and to translate selected portions of the information from a first language into a second language. Doing so would allow for the capability of data being accessed by those denied use of their hands and thereby precluded from using a conventional computer terminal.

Referring to claims 16 and 17. All of the limitations in method claims 16 and 17 are closely parallel to the limitations of system claims 6 and 7, analyzed above and are rejected on the same bases.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

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will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

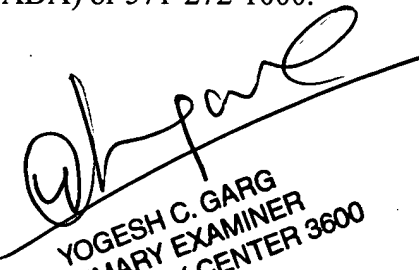
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amee A. Shah whose telephone number is 571-272-8116. The examiner can normally be reached on Mon.-Fri. 7:00 am - 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

AAS

December 29, 2006


YOGESH C. GARG
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